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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1985

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PACIFIC GAS AND ELECTRIC COMPANY,  
*Appellant,*

v.

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA, *et al.*,  
*Appellees.*

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On Appeal From The Supreme Court Of California

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**BRIEF AMICUS CURIAE OF THE  
NATIONAL LEAGUE OF CITIES,  
THE NATIONAL ASSOCIATION OF COUNTIES,  
THE INTERNATIONAL CITY  
MANAGEMENT ASSOCIATION,  
THE UNITED STATES CONFERENCE OF MAYORS,  
AND NATIONAL GOVERNORS' ASSOCIATION  
IN SUPPORT OF APPELLEES**

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### **QUESTION PRESENTED**

Whether a public utility commission's order, directing a public utility to include in the billing envelopes, which are paid for by the rate-payers, rate-payer information inserts prepared by a consumer group, offends the First Amendment, even though the utility retains the right to place its own inserts in the envelopes.

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 IN SUPPORT OF APPELLEES

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 INTEREST OF THE *AMICI* \*

The *amici* are organizations whose members include state, county, and municipal governments and officials

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\* Pursuant to Rule 36 of the Rules of this Court, the parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of the Court.

throughout the United States. *Amici* and their members have a vital interest in legal issues that affect the powers and responsibilities of state and local governments.

This case presents the question whether the First Amendment prohibits a state from directing a privately owned public utility to include in the billing envelope, the cost of which is paid for by the ratepayers, materials prepared by a consumer representative group. The materials will provide information to the ratepayers that the state public utility commission has concluded would enhance the quality of consumer representation in rate-making proceedings.

Constitutional issues affecting the power of government to regulate in the public interest are of great importance to *amici* and their members. The question in this case is particularly important because a privately owned public utility receives the benefits of legally mandated monopoly status in exchange for reasonable regulation by the state. If the First Amendment were applied to limit the ability of state and local governments to regulate such businesses, governmental efforts to assure that public utilities properly serve the ratepayers would be seriously impaired.

#### STATEMENT OF THE CASE

Appellee Public Utilities Commission of the State of California (hereinafter "Commission") is a state agency that has been established in order to oversee the activities of utility companies that have been permitted to operate as monopolies free from a normal competitive environment, *see* Cal. Const. Article XII, Section 6, and, in general, to "supervise and regulate every public utility in the State . . . ." Cal. Publ. Util. Code § 701. Pacific Gas and Electric Company (hereinafter "PG&E"), the appellant, is a large California utility company that supplies electricity to customers in 47 of the state's 58 counties and gas to customers in 37 of the 58 counties. Brief

of Appellant Pacific Gas and Electric Company (hereinafter "Brief of Appellant") at 3. Appellee, Toward Utility Rate Normalization, or TURN, which initially brought the present case, was established to represent the interests of residential consumers in proceedings before the Commission, most notably in rate-making proceedings in which utilities, including PG&E, apply to raise the charges that they levy for provision of gas or electricity. *TURN v. Pacific Gas & Electric Company*, Decision 83-12-047, December 20, 1983, as modified by decision No. 84-05-039, May 2, 1984, Before the Public Utilities Commission of the State of California, Appendix A, Motion of the Public Utilities Commission of the State of California to Dismiss at A-17-19 (filed March 1, 1985) (hereinafter "Appendix A").

This case concerns the decision of the Commission to provide TURN with limited access to the billing envelopes used by PG&E. The TURN inserts will be designed to inform consumers about TURN and to seek financial assistance for the organization's activities. In addition, "[a]ll of TURN's material shall clearly identify TURN as its source and state that its contents have neither been reviewed or endorsed by PG&E or [the] Commission." Appendix A at A-39.

The Commission's order setting forth this requirement recognized that the State of California has traditionally "required the billing space to be used for the benefit of ratepayers." Appendix A at A-8. In the past, the state had mandated that billing envelopes contain information, including notices of proposed rate increases and of public hearings, designed to further effective regulation. Appendix A at A-7. The inclusion of the TURN insert serves the same purpose.

In addition, the Commission had determined in a prior proceeding that the "extra space" in the envelope is "the property of ratepayers." *Id.* at A-6; *see id.* at A-15. Extra space is "the space remaining in the billing envelope, after inclusion of the monthly bill and any required legal

notices, for inclusion of other materials up to such total envelope weight as would not result in any additional postage cost." *Id.* at A-3. Consistent with its understanding that the extra space belongs to the ratepayers, the Commission recognized that "a utility in another state has sold the extra space for commercial advertising unrelated to the utility's business and used the resulting revenues to reduce rates to customers" rather than remitting those profits to its shareholders. *Id.* at A-8.

Finally, the Commission concluded that its work would be aided by inclusion of a billing insert that permits TURN to communicate with ratepayers. The Commission found that "there are many positions which TURN takes regarding PG&E that would be shared by substantially all [residential] ratepayers," *id.* at A-18, and that TURN's participation in Commission proceedings provides valuable assistance to the Commission. The Commission explained that such participation "tends to enhance the record in our proceedings." *Id.* at A-19 (quoting *Center for Public Interest Law and Robert L. Simmons v. San Diego Gas & Electric Company*, D.83-04-020, 7-8 (April 6, 1983)). Although the staff of the Commission has the primary responsibility for representing the public interest in rate proceedings, only consumer groups—unlike the staff—have the power to seek rehearing and judicial review of Commission orders, and such groups—also unlike the staff—will not be "subject to institutional pressures that can create conflicts of interest." *Id.* at A-20 (quoting *Consumers Lobby Against Monopolies v. PUC*, 25 Cal.3d 891, 908 (1979)). Accordingly, the Commission concluded that use of the extra space in order to assure that "residential ratepayers in PG&E's service territory would be given an opportunity to be informed of and to support advocacy efforts on their behalf" would be "an appropriate and efficient use of the extra space," *id.* at A-21, that would benefit the ratepayers. *Id.* at A-22.

The Commission ordered that TURN be given "access to the extra space in the billing envelope four times a

year for the next two years." *Id.* During that time, PG&E will remain free to enclose its own bill inserts into the envelope. It will have the exclusive right to do so in eight months of every year and it "may also make use of any of the extra space not used by TURN during the months TURN's material is inserted." *Id.* Nothing in the Commission's order prevents PG&E from sending bill inserts in the same envelope even if there is no extra space in those months so long as the utility pays any additional postage required by the presence of its insert.

#### SUMMARY OF ARGUMENT

PG&E presents an unconvincing argument to this Court. In the utility's view, the Commission has ordered it to yield its exclusive dominion over the billing envelope and ordered it to carry a message with which it may not agree. Thus, PG&E analogizes itself to the Jehovah's Witness who was forced to display on his automobile an ideological slogan with which he did not agree, see *Wooley v. Maynard*, 430 U.S. 705 (1977), or a newspaper forced to include statements of third parties among its editorial contents, see *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). See, e.g., Brief of Appellant at 9-10, 14.

The position taken by PG&E before this Court is not tenable. *First*, the billing envelope has never been treated as the exclusive preserve of PG&E. Rather, in California, as in many other states, the billing envelope, and indeed the bill itself, has been closely regulated by the state in order to assure that consumers receive information necessary to their interests. Most notably, other states require that consumers be informed of the means by which they may participate effectively in regulatory proceedings. The Commission's order in this case carries on that tradition.

*Second*, the state interest in permitting TURN access to the billing envelope is legitimate and it is weighty. Unlike most businesses, PG&E operates a legally-mandated monopoly. The effect of this monopoly grant is,

of course, to shelter the utility from the normal price competition of the marketplace. The Commission has the responsibility to regulate rates and it can better do so if TURN, which has a proven record of participation in Commission proceedings, is able to explain to ratepayers that it is available to represent their interests before the Commission. TURN not only aids ratepayers but, more to the point, its presence aids the Commission in effectively regulating utility monopolies.

*Third*, the inclusion of TURN's message will not force PG&E to be associated with TURN's speech. Precisely because billing envelopes have traditionally served as a means of communicating messages of interest to ratepayers, the TURN message will be recognized as another statement included in the billing envelope for the public benefit. No reasonable ratepayer will assume from the presence of the TURN insert that PG&E has associated itself with TURN's desire to monitor utility activities. Indeed, the Commission's order requires TURN to identify itself as the source of its inserts, and to state that their contents have been neither reviewed nor endorsed by PG&E or the Commission itself. Moreover, the Commission order does not require that PG&E yield any dominion over its own inserts; the utility must only continue the practice of sharing space in the billing envelope.

*Fourth*, the sole impact on PG&E may be that it is sometimes forced to pay for its own speech. If the TURN insert occupies all of the extra space, then PG&E will have to pay for additional postage required by its insert. But such a rule infringes no First Amendment interest. The rule that a state cannot bar a public utility from speaking, *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), does not prevent a state from restricting the extent to which a public utility's speech is subsidized by ratepayers.

*Fifth*, the Commission's order does not constitute the "taking" of property without just compensation. The extra space belongs to the ratepayers, and even PG&E

concedes that it can be forced to pay for the use of that space. Moreover, even if the extra space belonged to PG&E, the taking issue would not be ripe for review because the Commission order leaves open the possibility that PG&E will be able to use the billing envelope in precisely the manner it wishes. In any event, and under any circumstances, the Commission's order would not infringe property interests so severely as to justify the conclusion that its order constitutes a taking. See *Prune-yard Shopping Center v. Robins*, 447 U.S. 74 (1980).

## ARGUMENT

### I. THE CONTENTS OF BILLING ENVELOPES ARE REGULATED BY MANY STATES IN ORDER TO PROVIDE INFORMATION BENEFICIAL TO CONSUMERS

PG&E contends that it has traditionally "exercised discretion in selecting the content of its billing envelope." Brief of Appellant at 11. This assertion is, at best, misleading because PG&E fails to explain that the Commission traditionally has overseen the contents of the billing envelope.

The historical practice in California confirms this tradition. In 1913, the Commission's predecessor ordered a water company to inform its customers of the amount of water used each month "and of the rate and amount to be paid." *Slinack v. Inglewood Water Co.*, 3 C.R.C. 752, 757 (1913). Six years later, the Commission adopted rules governing electrical service and ordered that each electric bill reprint the regulations "regarding payment of bills, disputed bills and discontinued service." *Pacific Gas and Electric Co.*, 17 C.R.C. 143, 147 (1919).

The Commission's authority has not been limited to regulation of the bill itself. In 1982, the Commission

ordered PG&E to "mail to all its customers a bill insert which describes the components of the utility's costs" and required PG&E to submit the insert to its Executive Director for approval "prior to inclusion with any customer's bill." Appendix B, Appendices to Respondents' Answer to Petitions for Review, S.F. Nos. 24734, 35&37 (Filed July 19, 1984) (quoting *Application of Pacific Gas and Electric Company*, Decision No. 93887 (Dec. 30, 1981)). The Commission also has required that bill inserts be placed in the billing envelope "explaining the reasons behind [a] rate increase," *Pacific Gas and Electric Co.*, Decision No. 82-04-117 (April 28, 1982), slip op. at 21; and describing the components of utility costs, *San Diego Gas and Electric Co.*, Decision No. 82-03-073 (March 16, 1982), slip op. at 1, 2.

In addition, California has enacted legislation that requires certain information to be furnished to utility customers. Section 454 of the California Public Utilities Code requires each utility that proposes a rate increase to notify its customers of the proposal. The statute contemplates that the notice will be inserted in bill envelopes and requires that it "shall state the amount of the proposed increase expressed in both dollar and percentage terms, a brief statement of the reasons the increase is required or sought, and the mailing address of the commission to which any customer inquiries relative to the proposed increase . . . may be directed."

Regulation of the content of the utility's bills and mandated inclusion of bill inserts is by no means confined to California. As the following discussion demonstrates, many states have concluded that utilities must provide ratepayers with information necessary to permit their customers to monitor and, when necessary, to object to utility activities and proposals.

### A. Regulation of the Content of Utility Bills

States across the nation dictate to utilities the information that must be disclosed on customers' bills. For example, the Virginia Corporation Commission requires that before a late payment may be charged to a ratepayer a utility must "show on its customer bill, in addition to other necessary information, the date on which the bill is delivered to the U.S. mail, or delivered to the customer's premises, together with showing the date by which payment must be received in the utility's offices to avoid late payment charges." *In re: Investigation to Determine the Reasonableness of Certain Practices and Charges by Public Utilities*, Case No. 19589, Annual Report of State Corporation Commission (Jan. 10, 1977). Florida requires that bills for electric service contain a series of specific statements designed to assist the ratepayer. They include: (i) kilowatt-hours consumed, (ii) the customer charge, (iii) a breakdown of the charges due, (iv) identification of the applicable rate schedule, and (v) the average daily kilowatt consumption "for the current period and for the same period in the previous year." Electric Service Chapter 25-06.100. Similar requirements are in effect in Alaska,<sup>1</sup> Idaho,<sup>2</sup> New Mexico,<sup>3</sup> and Oklahoma.<sup>4</sup>

<sup>1</sup> See 3 AAC 48.550(g) (Jan. 1985) ("Customer bills must, at a minimum, separately identify the following information for the billing period: customer charges; total kilowatt-hour consumption and associated energy charges; monthly kilowatt maximum demand and associated demand charges; and the energy surcharge, if appropriate. If billing is based upon an estimate, the customer bill must also reflect this information").

<sup>2</sup> See IDAPA 31.C § 10.3 (requiring each gas and electric bill to show a comparison between current consumption and consumption in the same period a year earlier).

<sup>3</sup> See Rules and Regulations Governing Residential Customer Services By Gas, Electric and Rural Electric Cooperative Utilities, General Order No. 34, Section 2.3 (Oct. 26, 1979) (requiring disclosure of sixteen specified items).

<sup>4</sup> See Oklahoma Code Title 17, Section 254 ("each public utility subject to a fuel adjustment clause shall separately disclose in its

Regulation of bills has also been undertaken in order to assure that ratepayers have the information necessary to challenge utility actions. In Minnesota, for example, gas and electric utilities must include on their bills either (i) a statement informing customers "where the customer may initiate an inquiry or a complaint" or (ii) "a concise statement as to where such information can be obtained." Section 7820.0200(C), Regulations of the Public Utilities Commission. Similarly, the New Mexico Public Service Commission requires gas and electric utilities in that state to include in their bill an address "where the residential customer may initiate an inquiry or complaint regarding the bill as rendered or the service provided." Section 2.3(O), General Order No. 34, *supra*.

#### B. State-Mandated Communications Contained in Billing Envelopes

State regulation does not extend only to the utility bill itself. Rather, a number of states, like California, have mandated that utilities supply their consumers with information that, in the state's view, will further the regulatory process. Often, such information may—or must—be communicated by means of a bill insert. Indeed, the presence of legally-mandated notices in billing envelopes appears to be so noncontroversial that the California Public Utilities Commission has defined "extra space" in the billing envelope as that space left unused after the inclusion of the bill and required legal notices. See text at 3-4 *supra*. PG&E's failure to quarrel with that definition indicates that it too recognizes the legitimacy of state-mandated bill inserts.

States commonly require that utilities inform their customers of proposed rate increases. In North Carolina,

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customer bills the per unit cost of its fuel, purchased power or purchased gas adjustment."); Rule 35, Electric Rules of the Oklahoma Corporation Commission (requiring eleven specified items of information).

each electric utility that files an application with the Utilities Commission for a change in its rates must "provide a bill insert notifying its customers of such application . . ." Rule R8-49, Rules and Regulations, Electric Light and Power. The "form of such notices will be supplied to the utility by the Commission" and will normally contain five specific categories of information including a schedule of public hearings. *Id.* The Maine Public Utilities Commission has also required utilities to include notice of proposed rate increases in billing envelopes. See Rule 6(B)(1)(b), Rules of Practice and Procedure (notice of permanent rate increase). Ohio's Rules of Public Utilities Commission, §§ 4909.191(A) and 4901:1-11.10(c), also mandate such notice.

Other states require that such notice be given to each customer although they do not mandate that a utility include the notice in the billing envelope. Idaho, for example, provides that notice of proposed rate increases "may be mailed to customers as bill stuffers over the course of a billing cycle." IDAPA 31.C § 10.2. States with similar requirements include Florida, see Section 25-22.406, *supra*; Minnesota, see Section 7830.3200; Indiana, 170 IAC 4-1-18; and South Carolina, see South Carolina Code of Laws, Vol. 26 R. 103-330 (code § 53-3-140) (1976) (electric utilities); *id.* at 103-430 (gas utilities).

Similarly, some states require that utilities send annual messages to consumers. In New Mexico, utilities are required to provide their customers annually with a statement, which may be enclosed in the billing envelope, "that summarizes the rights and responsibilities of the utilities and its residential customers . . . ." Section 4.3, General Order No. 34, *supra*. North Dakota utilities must insert into their bills an annual statement that (i) summarizes the existing rate schedule applicable to major classes of customers, (ii) identifies any classes whose rates are not summarized, and (iii) gives "notice calling the attention

of the customers to the availability of alternative rate schedules . . . ." Regulation 69-02-02.1(3)(c), North Dakota Public Service Commission. North Carolina requires that each utility provide an annual "breakdown of its operating expenses" and permits that information to be conveyed by means of a bill insert. R8-50.

### C. State-Mandated Notice Promoting Effective Citizen Participation

At least five states require utilities to inform consumers how they may seek assistance to contest utility actions. In the State of Washington, notices of proposed rate increases must be sent to each customer either in a bill insert or in a separate mailing. That notice must "contain the information that a public counsel will be appointed to represent the public" and must include the address of the public counsel. WAC 480-80-125 (1983). Similarly, New Hampshire requires each electric utility to transmit as a bill enclosure an annual statement to consumers that includes the telephone number of the consumer assistant at the state Public Utilities Commission. See Rule 303.03(e), Rules, Electric Service.

Three states, Illinois, Oregon and Wisconsin, have created citizens utility boards to participate in the regulatory process and have empowered those boards to insert messages in billing envelopes. For example, Illinois' Citizens Utility Board represents consumer interests before the Illinois Commerce Commission, which regulates utility rates. Ill. Code, Chapter 111 $\frac{2}{3}$ , Section 902. By statute, the Citizens Utility Board is empowered to prepare bill inserts that inform consumers of the Board's purpose and activities. *Id.* at Section 909. No more than four such inserts may be included in a customer's billing envelope in any one year. *Id.* at Section 909(2)(b).

By voter initiative, the people of Oregon have established a Citizens Utility Board to represent consumer

interests and have empowered the Board, like its Illinois counterpart, to include consumer materials in billing envelopes. Section 10, Measure No. 3 (enacted Nov. 6, 1984). And Wisconsin's Citizens Utility Board is permitted to send two bill inserts annually that inform consumers of its activities. Wis. Stat. § 199.10(2)(b).

These widespread practices demonstrate that states across the nation have recognized that effective regulation requires that consumers be informed of essential facts concerning the activities of regulated monopolies. Those facts include, as an inherent part of regulation, information alerting consumers to the means by which they may question or challenge utility action. None of these requirements limits the ability of public utilities to add their voices to political or social debate, see *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), but all of the regulations recognize that utilities cannot be relied upon voluntarily to supply their customers with all needed information. State-mandated disclosures within billing envelopes are a well-established and traditional means of accomplishing legitimate regulatory goals. A decision that such regulation is unconstitutional would seriously impede the ability of states to ensure that regulated monopolies are acting in the public interest.<sup>5</sup>

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<sup>5</sup> The federal government has also recognized the propriety of state regulation that requires government-sanctioned monopolies to carry the speech of third persons. The Cable Communications Policy Act of 1984 authorizes local governments to require "that channel capacity [of cable systems] be designated for public, educational, or governmental use . . . ." 47 U.S.C. § 531(b). Although those channels will be operated by the local cable system and broadcast over its equipment, the statute specifically states that the cable operator "shall not exercise any editorial control" over such channels. *Id.* at § 531(e).

## II. THE COMMISSION'S ORDER DIRECTLY SERVES THE PUBLIC INTEREST BY ENHANCING THE EFFECTIVENESS OF UTILITY REGULATION

The TURN insert supports the valuable contribution TURN makes to regulatory efforts. As the survey of state regulation indicates, *see text at 9-13, supra*, the unusual economic position of public utilities requires special surveillance of their relationships with their customers. Often, this surveillance takes the form of requirements that utilities disclose specific information as in, for example, the multiple state regulations mandating the disclosure of pending ratemaking proceedings. The state interest is not exhausted, however, when some information regarding a utility's plans is disclosed. Rather, the state has an important interest in ensuring the disclosure of all information that will assist a public utility commission in carrying out its duty to regulate utilities in the public interest. The TURN insert, which reveals the existence of an organization able to intervene in commission proceedings on behalf of consumer interests, directly promotes effective regulation.

The legitimacy of the Commission's order cannot be isolated from the regulatory environment in which it will be implemented. Public utilities like PG&E are regulated monopolies shielded from the rigors of competition. *See A. Kahn, The Economics of Regulations*, 114-15 (1971). Because the marketplace provides no restraint on their pricing behavior, public utilities would inevitably engage in monopolistic pricing if they were not restrained by some non-market mechanism. *See Cantor v. Detroit Edison Co.*, 428 U.S. 579, 595-96 (1976); *see also Slinack v. Inglewood Water Co.*, 3 C.R.C. at 755-56 (manager of water company "admitted, under oath, that the company's conduct towards the public would be very different if the company were subject to competition.") California, like states across the nation, has decided to invest its public utilities commission with the legal authority to set utility prices in the public interest. *See Cal. Const. Art. XII, Section 6, Cal. PUC Code Section 701.*

As Justice Blackmun has noted, the existence of the monopoly grant "justifies extensive oversight on the part of the State to protect the ratepayers from exploitation of the monopoly power through excessive rates and other forms of overreaching." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. at 550 (dissenting opinion). The ability of the Commission to exercise its oversight responsibilities when it considers proposed rate increases necessarily depends on its ability to discern the bases of a utility's proposals and, if necessary, to expose flaws in the utility's reasoning. The staff of the Commission is empowered to carry out those duties. But the Commission has recognized that the presence of an adversary who has no regulatory responsibility may sharpen the issues and, as the Commission noted, "enhance the record" in regulatory proceedings. Appendix A at A-19. Because there are no competitors to oppose a utility's actions, and because residential consumers often lack the sophistication and technical expertise to challenge complex utility applications, the Commission recognized that TURN would be able to contribute to regulatory proceedings the kind of adversariness that our legal tradition has always understood to bring more reliable results in legal proceedings.

The desire to ensure greater accuracy in legal proceedings is obviously a legitimate state goal. And the means the Commission has selected is closely related to the attainment of that state interest. The TURN insert will permit that organization to inform consumers of its function and activities and allow it to solicit funds with which it will be able to participate in regulatory proceedings. The inclusion of the TURN insert in the billing envelope will thus enable TURN to communicate effectively with consumers and will increase the quality of its representation. Because TURN has the expertise and background to enable it to serve consumer interests, the Commission

correctly understood that inclusion of the TURN insert in billing envelopes would enhance the quality and effectiveness of the Commission's own actions.

This judgment is shared by other jurisdictions. The State of Illinois has established a Citizens Utility Board, with power to send bill inserts to ratepayers, in order "to promote the health, welfare, and prosperity of all of the citizens of this State by ensuring effective and democratic representation of utility consumers before the Illinois Commerce Commission," other administrative agencies and the courts. Ill. Code, Public Utilities, Chapter 111 $\frac{2}{3}$ , Section 902. The Illinois legislature has expressly labeled this goal as "a statewide interest and not a private or special concern." *Id.* The State of Washington requires that ratepayers be informed of pending rate increases and be provided with the address of a public counsel in order that "the customer is able reasonably to make an informed decision about whether to participate in the hearing process." WAC 480-80-125. In 1984, the State of Oregon established a citizens utility board because the "people of Oregon [found] that utility consumers need an effective advocate to assure that public policies affecting the quality and price of utility service reflect their needs and interests . . ." Measure No. 3, *supra*, section 1. Moreover, "utility consumers need a convenient manner of contributing to the funding of such an organization so that it can advocate forcefully and vigorously on their behalf concerning all matters of public policy affecting their health, welfare and economic well-being." *Id.*

The record before this Court is clear. The Commission's order is a carefully-tailored means of accomplishing an important state goal. As we demonstrate herein, *see* Parts III and IV, *infra*, the requirement that TURN's insert be carried, along with other legally-mandated notices, in the billing envelope infringes no First Amendment interest of any utility. Accordingly, the grounds

asserted by PG&E in its appeal from the Commission order provide no basis for reversal of that state judgment.

### III. THE PRESENCE OF THE TURN INSERT WILL NOT FORCE PG&E TO SPONSOR SPEECH WITH WHICH IT MAY DISAGREE

The California Commission has ordered that, during a two-year experimental period, TURN will be permitted to include its inserts within billing envelopes four times a year. The order is wholly consistent with this Court's decision in *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), which concerned an attempt by a public utility commission to prohibit public utilities from using bill inserts to discuss political matters. This Court held that such an order was unconstitutional because it impermissibly restricted the utility's ability to speak on issues of public importance.

In this case, by contrast, PG&E remains free to speak through its news letter, *Progress*, about any issues of its concern. The argument presented by PG&E to this Court, therefore, is not primarily that the California order violates *Consolidated Edison*, but rather that the order conflicts with this Court's decisions that limit the ability of a state to force a person or newspaper to sponsor speech with which he or she may disagree. *See Wooley v. Maynard*, 430 U.S. 705 (1977); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). A close examination of those cases and this Court's subsequent treatment of them demonstrates, however, that the Commission's order impinges no First Amendment interest.

The *Miami Herald* case brought before this Court a state statute that guaranteed a political candidate the right to reply in a newspaper's pages to any criticism levied at him or her by that newspaper. The Court held that the statute violated the First Amendment right of

the newspaper to determine for itself the content of its news and editorial pages. As the Court explained, the "choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment." *Id.* at 258. Editorial discretion cannot be restricted because, although a "responsible press is an undoubtedly desirable goal, . . . press responsibility is not mandated by the Constitution and like many other virtues it cannot be legislated." *Id.* at 256.

*Wooley v. Maynard* concerned the exercise of an individual's First Amendment rights. A New Hampshire law required residents to display on their automobiles a license plate carrying the inscription "Live Free or Die." For religious reasons, a state resident objected to the presence of the slogan on his automobile. This Court ruled the law unconstitutional because the state mandate "forces an individual, as part of his daily life—indeed constantly while his automobile is in public view—to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable." *Id.* at 715.

Two more recent decisions of this Court have demonstrated, however, that in certain circumstances states may mandate access to means of communication or require disclosure by a public speaker without running afoul of the First Amendment. In *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980), decided the same term as *Consolidated Edison*, the Court held that the State of California did not violate the First Amendment by forcing the owner of a shopping center to permit a youth group to hand out pamphlets and collect signatures within the shopping center. The Court distinguished *Wooley* because, *inter alia*, in the context of a shopping center the "views expressed by members of the public in passing out pamphlets or seeking signatures for a petition . . . will not likely be identified with those of

the owner." *Id.* at 87. The Court similarly distinguished *Miami Herald* because that case "rests on the principle that the State cannot tell a newspaper what it must print," *id.* at 88, a concern not present in *Pruneyard*.

Recently, this Court discussed *Wooley* and *Miami Herald* in the context of commercial advertising. The Court held that a state may require an attorney to disclose in his or her advertisements certain information concerning the prosecution of a civil claim on a contingency basis. *Zauderer v. Office of Disciplinary Counsel*, 105 S.Ct. 2265, 2283 (1985). In so holding this Court recognized that "First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed . . ." *Id.* at n. 14.

Taken as a whole, these cases demonstrate that the California order is wholly consistent with the First Amendment. First, PG&E, unlike the *Miami Herald*, is not being forced to include within its own speech the views of another. PG&E would have this Court believe that it will be compelled to "publish" the speech of third persons. Brief of Appellant at 10. But the California order does not compel PG&E to include TURN's message as part of its own insert. Rather, PG&E is ordered only to share with TURN—as it currently shares with other legally-mandated notices—the extra space available in the billing envelope. Indeed, because that extra space is owned by the ratepayers, the utility has no right to exercise editorial dominion over it. PG&E's editorial discretion is thus left unhampered.

Second, PG&E is not a newspaper whose ability to speak may be threatened by state action. As Justice White pointed out in his *Miami Herald* concurrence, a "newspaper or magazine is not a public utility subject to 'reasonable' governmental regulation in matters affecting the exercise of journalistic judgment as to what shall be printed." 418 U.S. at 259. But PG&E is a pub-

lic utility that, like utilities across the nation, is subject to reasonable regulation mandating the provision of specified information to its customers. As in *Pruneyard*, therefore, the concerns that underlie the decision in *Miami Herald* "obviously are not present here." 447 U.S. at 88.

*Third*, there is no danger that the presence of the TURN insert will confuse consumers and cause them to believe that PG&E is "an instrument" for the consumer group's message. *Wooley v. Maynard*, 430 U.S. at 715. The TURN insert will be labeled expressly as such. Appendix A at A-39. Moreover, the longstanding practice in California is that billing envelopes serve as conduits of information. That practice is echoed across the nation. Utility customers understand, therefore, that the information contained within the billing envelope does not necessarily reflect the views of the utility. In these circumstances, the holding in *Pruneyard* is entirely applicable because, as in that case, the views expressed in the TURN insert "will not likely be identified" with PG&E. 447 U.S. at 87.

This Court's decision in *Consolidated Edison* directly supports the conclusion that consumers will be able to comprehend the true sponsor of the TURN message. In *Consolidated Edison*, the public utility commission argued that a prohibition on bill inserts was needed in order to protect the privacy rights of customers. But this Court understood that consumers were perfectly able to recognize a utility insert for what it was and to act accordingly. As the Court said, "the customer of Consolidated Edison may escape exposure to objectionable material simply by transferring the bill insert from envelope to wastebasket." 447 U.S. at 542. There is no reason to believe that customers in California will be less discerning. Just as customers of Consolidated Edison could recognize the difference between the bill itself and the utility's political speech, so customers in California will

be able to distinguish between the utility's own inserts and the message transmitted by TURN.

*Fourth*, as in *Zauderer*, the TURN insert is merely a form of legally-required disclosure that directly serves the regulatory process. The constitutionality of such disclosure in the field of utility regulation was recently upheld by a New York court. *Brooklyn Union Gas Co. v. Public Service Commission*, 101 A.D.2d 453, 478 N.Y.S. 2d 78 (App. Div. 1984). That case concerned a utility commission order that natural gas utilities must include a disclosure in any promotional advertisement, stating that natural gas prices might be affected by deregulation and including a telephone number from which further information could be obtained. The court ruled that the disclaimer was not needed to prevent deceptive commercial speech, *id.* at 83, but nonetheless held the requirement constitutional. In so holding, the court recognized the substantial state interest in ensuring the provision of "complete information to consumers . . . ." *Id.* at 83.

Like the New York regulation, the Commission's order is intended not to eliminate deception in commercial speech, but to assist the regulatory process and to assure a fuller record on which the Commission can base its ratemaking orders. The TURN insert will accompany the utility bill, which is a form of commercial speech, and TURN's activities will be focused on the purely commercial activities of public utilities. Indeed, the intrusion on the utility here is substantially less severe than that approved in *Zauderer* because the required disclosures will appear in a separate insert and will not occupy any space purchased by the utility itself.

In sum, the Commission orders do not violate the First Amendment. PG&E will not be forced to "publish" any views, much less the views of anyone with whom it may disagree. The California order merely utilizes the billing envelope in the manner in which it has been tradition-

ally used: to convey information to ratepayers that, in the state's view, will assist effective regulation. California consumers, familiar with the usual uses of billing envelopes, will not confuse TURN's message with the speech contained in PG&E's own inserts. In these circumstances, no constitutionally-protected interest will be impaired.

#### IV. THE COMMISSION'S ORDER DOES NOT INFRINGE UPON ANY RIGHT OF PG&E TO ADD ITS VOICE TO PUBLIC DEBATE

The effect of the Commission's order is quite limited. During an experimental two-year period, TURN will be able to place an insert in billing envelopes four times per year. In the other months, PG&E is guaranteed the ability to place its inserts in the billing envelope as it has in the past. In months when the TURN insert is in the envelope, PG&E will be able to use any extra space that remains. Even if no extra space is available, PG&E will still be able to place its inserts in the envelope. It will simply have to pay the additional postage required.

Prior to the issuance of this order, California utilities have sent their inserts free of charge, because the ratepayers pay for the postage required to send the billing envelope, and the utilities have used the extra space contained therein. Appendix A at A-3. If the time ever comes when the presence of the TURN insert requires PG&E to pay for postage in order to include its own insert, then the Commission order may have the effect of limiting the extent to which the ratepayers of California subsidize the utility's speech. This limitation, however, does not constitute the restriction of a constitutional right.

The distinction between a constitutional right and the asserted right to a subsidy is well illustrated by the holdings of this Court in *Roe v. Wade*, 410 U.S. 113 (1973) and *Harris v. McRae*, 448 U.S. 297 (1980). In *Roe v.*

*Wade*, the Court held that a woman has a constitutional right to obtain an abortion. In *Harris v. McRae*, the Court held, however, that the right to an abortion does not require the government to pay for an abortion. The Court explained that although "the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all of the advantages of that freedom." 448 U.S. at 317-18. The government may choose to fund the exercise of that right, but it is not constitutionally compelled to do so. *Id.* at 318; see *Regan v. Taxation with Representation*, 461 U.S. 540, 545-46 (1983).

The distinction between a right and the government's discretion whether to offer financial support for exercise of that right is the distinction between *Consolidated Edison* and this case. In *Consolidated Edison*, this Court struck down a New York prohibition that limited utility speech even if the utility paid for its speech in full. 447 U.S. at 543. By contrast, the Commission's order leaves PG&E free to use the billing envelope to speak any time it wishes. The mere fact that the Commission will not permit the utility to claim an exclusive right to a government subsidy infringes no legitimate First Amendment interest.

#### V. THE COMMISSION'S ORDER DOES NOT CONSTITUTE A "TAKING" UNDER THE FIFTH AND FOURTEENTH AMENDMENTS

Some amici have argued that the Commission's order is unlawful because it constitutes a "taking" of property without just compensation in contravention of the Fifth Amendment, as incorporated by the Fourteenth Amendment. PG&E has wisely chosen not to assert that contention before this Court, perhaps because it recognizes that, for the following reasons, the Fifth Amendment issue is entirely lacking in merit.

First, no property interest of PG&E can possibly be infringed by the Commission's order because the extra space in the envelope does not belong to PG&E. The Commission has found in at least two proceedings that the extra space in which the insert would be placed "is ratepayer property." Appendix A at A-3; *id.* at A-4, A-6. This Court has held that the sufficiency of a claimed property interest "must be decided by reference to state law." *Bishop v. Wood*, 426 U.S. 341, 344 (1976); see *Pruneyard Shopping Center v. Robins*, 447 U.S. at 84; *Board of Curators v. Horowitz*, 435 U.S. 78, 82 (1978). This Court will not, therefore, overturn a "tenable" interpretation of state law finding that no property interest exists. *Bishop v. Wood*, 426 U.S. at 347.

In this case, the Commission's interpretation is obviously more than tenable. The Commission reached its conclusion in a previous proceeding, and it reaffirmed the principle in the proceeding below. Appendix A at A-3. The Commission's conclusion rests on the ground that ratepayers are legitimately charged for mailing costs and the extra space is, therefore, "an artifact generated with ratepayer funds . . ." Appendix A at A-4. A contrary result would confer upon PG&E "a benefit beyond the mailing expense legitimately recoverable from the ratepayers." *Id.*

No decision of this Court requires any other conclusion. Although the *Consolidated Edison* opinion states that the utility in that case wished "to utilize its own billing envelopes to promulgate its views," 447 U.S. at 540, the Court was merely describing the property interests as they may have appeared in the record of that case. Nothing in the Court's decision suggests it was establishing a general principal of federal property law decreeing that all billing envelopes in all states must belong to utilities. Similarly, the Court's opinion in *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. 23 (1926), which preceded *Erie Railroad v. Tompkins*, 304 U.S. 64 (1938), by twelve years, does

not restrict California's ability to apply its own property law to PG&E.

Second, any claim that the extra space is not owned by the ratepayers is barred by principles of *res judicata*. The Commission's initial determination that the extra space belongs to ratepayers was not appealed by PG&E. See *Motion to Dismiss of the Public Utilities Commission of the State of California*, No. 84-1044 at 8 (March 1, 1985). Accordingly, that question of state law may not be relitigated in this case. See *Consumers Lobby Against Monopolies v. PUC*, 25 Cal.3d 891, 901, 603 P.2d 41, 47, 160 Cal. Rptr. 124, 129 (1979); *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 630, 268 P.2d 723, 728, appeal dismissed, 348 U.S. 859, 860 (1954); see also Cal. Pub. Util. Code § 1709.

Third, PG&E in effect has conceded that it has no property interest that will be impaired by the Commission's order. In a pleading before this Court, PG&E has suggested that the state could, as an alternative course of action, "[a]sses[s] an economic value and charg[e] appellant for the value of the space . . . ." Appellant's Brief in Opposition To Motions To Dismiss at 2 n.2; see *id.* at 3 & n.3; see also Brief of Appellant at 39. If PG&E can be charged for its use of billing envelope space, then the only possible conclusion is that the extra space does not belong to PG&E. Even without determining whether the ratepayers own the extra space, there is no cause to conclude, in the face of PG&E's own statements, that the utility's property interest will be impaired in any way.

Fourth, even if PG&E owned the extra space, the record before this Court would not support a decision that the Commission's order constitutes a taking. That order permits TURN to place its insert in billing envelopes four times a year during a two-year experimental period. Although the TURN inserts will have priority over PG&E inserts, it remains uncertain whether

any TURN insert will occupy all of the available extra space. Absent such an eventuality, a time may never come during the two-year experimental period when PG&E is prevented from using its property in exactly the manner it wishes. In these circumstances, "there is as yet no concrete controversy" that can be decided by this Court. *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); see *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 53 U.S.L.W. 4969 (June 28, 1985).

Fifth, this Court's decision in *Pruneyard Shopping Center v. Robins* requires the conclusion that, even if PG&E owned the extra space, and even if the taking issue were ripe for review, the Commission order is constitutional. In *Pruneyard*, this Court held that a California law mandating that pamphleteers be permitted on private property did not constitute the taking of property. Although the right to exclude others from the use of one's property is constitutionally recognized, see *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979), the Court concluded that there "is nothing to suggest that preventing appellants from prohibiting this sort of activity will unreasonably impair the value or use of their property . . . ." 447 U.S. at 83; see *Andrus v. Allard*, 444 U.S. 51 (1979). The same holds true here. A form of regulation that may permit PG&E to operate unhampered and, at most, would require the utility to pay postage for the messages it wishes to transmit, see text at 22-23, *supra*, does not deprive that utility of "the 'justice and fairness' guaranteed by the Fifth and Fourteenth Amendments." *Agins v. City of Tiburon*, 447 U.S. at 263 (quoting *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978)).<sup>6</sup>

<sup>6</sup> The decision in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), requires no different outcome. The Court in that case held that a "permanent physical occupation" of real property constituted a taking. *Id.* at 421. The Court was

## CONCLUSION

The order under review in this case directly advances the governmental interest in effective regulation of public utilities. It accomplishes that important goal in a manner that does not infringe First or Fifth Amendment interests. Accordingly, the Court should affirm the judgment below.

Respectfully submitted,

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careful in its discussion to distinguish "temporary and limited" incursions into the use of property like those considered in *Pruneyard*. *Id.* at 434. And the Court explained that "such temporary limitations are subject to a more complex balancing process to determine whether they are a taking." *Id.* at 435 n.12. In this case, that balancing process yields the same result reached by the *Pruneyard* Court.

## **APPENDIX**

**APPENDIX****RELEVANT EXCERPTS FROM STATE CODES,  
RULES, AND REGULATIONS****Alaska Administrative Code****3 AAC 48.550. Rate Design.**

(a) The customer or fixed charge may recover only those customer costs defined in 3 AAC 48.540(f)(1)(A) and (B). However, the commission will, in its discretion, consider requests to increase or decrease the fixed charge when the electric utility or any other party submits to the commission appropriate justification and analysis which relates to its pricing objectives. . . .

(g) Each electric utility shall design and, upon approval of the commission, distribute informative and understandable customer bills. Customer bills must, at a minimum, separately identify the following information for the billing period: customer charges; total kilowatt-hour consumption and associated energy charges; monthly kilowatt maximum demand and associated demand charges; and the energy surcharge, if appropriate. If billing is based upon an estimate, the customer bill must reflect this information.

**3 AAC 50.300. Information to Electric Consumers.**

(a) An electric utility shall provide to each new electric consumer, coincident with the application for service, a clear and concise explanation of any rate schedule in its currently effective tariff which applies to that consumer.

(b) Not later than 30 days after the filing of a tariff advice letter in which a change in a rate schedule is requested, an electric utility shall transmit to its affected consumers a clear and concise explanation of the proposed change. This provision does not apply to rate

adjustments resulting from an automatic fuel-cost rate adjustment clause.

(c) At least once each year, an electric utility shall transmit to each of its electric consumers an informative summary of any rate schedule in its current effective tariff which applies to those consumers.

(d) On request of an electric consumer, an electric utility shall transmit a clear and concise statement of the consumer's actual energy consumption and, if billed separately, power consumption for any billing period during the previous 12 months unless the information is not reasonably ascertainable by the utility.

#### **Florida, Rules of the Public Service Commission**

##### **25-6.100 Customer Billings.**

(1) Bills shall be rendered monthly and as promptly as possible following the reading of meters.

(2) By January 1, 1983, each customer's bill shall show at least the following information:

(a) The meter reading and the date the meter is read, in addition to the meter reading for the previous period. If the meter reading is estimated, the word "estimated" shall be prominently displayed on the bill.

- (b) 1. Kilowatt-hours (KWH) consumed including on and off peak if customer is time of day metered.
2. Kilowatt (KW) demand, if applicable, including on and off peak if customer is time-of-day metered.

(c) The dollar amount of the bill, including separately:

1. Customer charge.
2. Energy (KWH) charge, exclusive of fuel, in cents per KWH, including amounts for on and

off peak if the customer is time-of-day metered and energy conservation costs.

3. Demand (KW) charge, exclusive of fuel, in dollar cost per KW, if applicable, including amounts for on and off peak if the customer is time-of-day metered.
4. Fuel cost in cents per KWH (no fuel costs shall be included in the base charge for demand or energy).
5. Total electric cost which is the sum of the customer charge, total fuel cost, total energy cost, and total demand cost.
6. Franchise fees, if applicable.
7. Taxes, as applicable on purchase of electricity by the customer.
8. Any discount or penalty, if applicable.
9. Past due balances shown separately.
10. The gross and net billing, if applicable.

(d) Identification of the applicable rate schedule.

(e) The date by which payment must be made in order to benefit from any discount or avoid any penalty, if applicable.

(f) The average daily KWH consumption for the current period and for the same period in the previous year, for the same customer at the same location.

(g) The delinquent date or the date after which the bill becomes past due.

(h) Any conversion factors which can be used by customers to convert from meter reading units to billing units. Where metering complexity makes this requirement impractical, a statement must be on the bill advising

that such information may be obtained by contacting the utility's local business office.

(i) Where budget billing is used, the bill shall contain the current month's consumption and charges separately from budgeted amounts.

(j) The name of the utility plus the address and telephone number of the local officer where the bill can be paid and any questions about the bill can be answered.

(3) When there is sufficient cause, an estimated bill may be submitted provided that with the third consecutive estimated bill the company shall contact the customer explaining the reason for the estimated billing and who to contact in order to obtain an actual meter reading. An actual meter reading must be taken at least once every six months. If an estimated bill appears to be abnormal when a subsequent reading is obtained, the bill for the entire period shall be computed at a rate which contemplates the use of service during the entire period and the estimated bill shall be deducted. If there is reasonable evidence that such use occurred during only one billing period, the bill shall be computed.

(4) The regular meter reading date may be advanced or postponed not more than five days without a pro-ration of the billing for the period.

(5) Whenever the period of service for which an initial or opening bill is rendered is less than the normal billing period, the charges applicable to such service, including minimum charges, shall be pro-rated except that:

(a) Initial or opening bills need not be rendered, but the energy used during such period may be carried over to and included in the next regular monthly billing.

(6) The practices employed by each utility regarding customer billing shall have uniform application to all customers on the same rate schedule.

#### (7) Franchise Fees.

(a) When a municipality charges a utility any franchise fee, the utility may collect that fee only from its customers receiving service within that municipality. When a county charges a utility any franchise fee, the utility may collect that fee only from its customers receiving service within that county.

(b) A utility may not incorporate any franchise fee into its other rates for service.

(c) For the purposes of this subsection, the term "utility" shall mean any electric utility, rural electric cooperative, or municipal electric utility.

(d) This subsection shall not be construed as granting a municipality or county the authority to charge a franchise fee. This subsection only specifies the method of collection of a franchise fee, if a municipality or county, having authority to do so, charges a franchise fee.

#### 25-22.405 Notice of Public Utility Hearings.

(1) The provisions of this rule shall apply to all public hearings conducted by the Commission, except rulemaking hearings held pursuant to 25-22.10 through .18, F.A.C.

(2) Notice of such public hearings shall be given by the Commission to the clerk of the board of county commissioners of each county affected, the chief executive officer of each municipality in the area affected, all parties of record and all persons who have requested notice of such proceedings.

(3) A summary of the subject matter and notice of hearing shall be published by the Commission in the Florida Administrative Weekly. The summary shall be drawn and notice given as required by the provisions of the statute under which relief is sought, if applicable, but shall not be published less than 14 days prior to the hearing.

(4) The Commission may require any public utility in such proceedings to publish additional notices in newspapers of general circulation in the area affected and to give notice to its customers by mail, as may be deemed reasonably necessary by the Commission to afford adequate notice to the customers of the utility.

(5) When the Commission determines that the health, safety, or welfare of the public requires an emergency hearing, notice may be accomplished by giving notice to those parties listed in subsection 2 not less than 48 hours prior to the time scheduled for the hearing.

#### **25-22.406 Notice and Public Information on General Rate Increase Requests.**

(1) The provisions of this rule shall be applicable to all requests for general rate increases by electric, gas, water and sewer utilities and telephone companies subject to the Commission's jurisdiction.

(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service area affected.

(3) (a) Within 15 days after it has been notified by the Commission that the Minimum Filing Requirements (MFRs) have been met, the utility shall place a copy of the MFRs at its official headquarters and at its business office in each municipality in which service hearings were held in the last general rate case of the utility. Within 15 days after the time schedule has been mailed to the utility, copies of the MFRs shall be placed in the utility business office in each additional city in which service hearings are to be held. Upon customer request a copy of the MFRs shall be placed in a utility business office not located in a city where a service hearing is to be held. The copies of the MFRs shall be available for public inspection during the utility's regular business hours.

(b) In addition to the locations listed above, the Commission may require that copies of the MFRs be placed at other specified locations.

(4) (a) Within 15 days after the time schedule for the case has been mailed to the utility, the utility shall prepare and distribute a synopsis of the rate request. The synopsis shall be approved by the Commission or its staff prior to distribution and shall include:

1. A summary of the section of the MFRs showing a comparison of the present and proposed rates for major services;
2. A statement of the anticipated major issues involved in the rate case;
3. A copy of the executive summary filed with the MFRs.
4. A description of the ratemaking process at the time schedule established for the rate case;
5. The location at which complete MFRs are available.

(4) (b) Copies of the synopsis shall be distributed to the same locations as required for the MFRs, to the main county library within or most convenient to the service area and to the chief executive officer of each county and municipality within the service area affected.

(5) Within 30 days after the rate case time schedule has been mailed to the utility, the utility shall begin sending a notice approved by the Commission or its staff to its customers containing:

- (a) A statement that the utility has applied for a rate increase and the general reasons for the request;
- (b) The locations at which copies of the MFRs and synopsis are available;

(c) The time schedule established for the case, and the dates, times and locations of any hearings that have been scheduled; and

(d) A comparison of current rates and service charges and the proposed new rates and service charges.

1. Such notice shall be completed at least 10 days prior to the first scheduled service hearing.

(6) At least 7 days and not more than 20 days prior to each service hearing, the utility shall have published in a newspaper of general circulation in the area in which the hearing is to be held a display advertisement stating the date, time, location and purpose of the hearing. The advertisement shall be approved by the Commission or its staff prior to publication.

(7) When the Commission issues proposed agency action and a hearing is subsequently held, the utility shall give written notice of the hearing to its customers at least 14 days in advance of the hearing. This notice shall be approved by the Commission or its staff prior to distribution.

(8) Staff Assisted Water or Sewer Rate Requests. The following is applicable to a staff assisted rate request for a water or sewer utility as provided for in Rule 25-10.180, F.A.C.

(a) Upon receipt of the staff reports, the utility shall place copies of the application and staff reports, including a comparison of the present and proposed rates, at its office. The copies shall be available for public inspection during the utility's regular business hours.

(b) At least 14 days prior to the customer meeting, the utility shall send a notice to its customers containing:

1. The time, date, place and purpose of the meeting;
2. A statement that the utility has applied for a rate increase and the general reasons for the increase;

3. The location at which copies of the application and staff reports are available;

4. A comparison of the present and proposed rates;

5. A statement that any customer comments concerning the rate increase should be addressed to the Commission Clerk. The address and telephone number of Clerk shall be provided.

6 The utility's address, telephone number and business hours.

(c) Notice of the customer meeting shall be approved by the Commission or its staff in advance of distribution.

(9) After the Commission's issuance of an order granting or denying a rate change, the utility shall give notice to its customers of the order and the revised rates. The notice shall be approved in advance by the Commission or its staff and transmitted to the customers with the first bill containing the new rates.

## **Idaho IDAPA 31.C**

### **§ 10.1 Explanation of Rate Schedule**

Each natural gas and electric utility subject to the Commission's jurisdiction shall transmit annually to each of its customers and give to each new customer at the time of initiation of service a clear and concise explanation of the existing rate schedule for that customer.

### **§ 10.2 Notice**

Each natural gas and electric utility subject to the Commission's jurisdiction which applies for a general rate increase or natural gas tracker increase shall transmit to each customer a statement telling the customer that the company has applied for a general rate increase or natural gas tracker increase and stating the overall percentage increase which the company is requesting. These

notices may be mailed to customers as bill stuffers over the course of a billing cycle.

### § 10.3 Comparison of Consumption

Each natural gas and electric utility subject to the Commission's jurisdiction shall compare on each customer's regular billing the customer's actual consumption of natural gas or electricity with the customer's actual consumption of natural gas or electricity for the corresponding billing period for the previous year. If the two billing periods compared contain a different number of days, the utility shall adjust the data to take into account the different length of the billing periods and show the comparison as either as absolute change in therm use or kilowatt hour use per day, week or month, or as a percentage change in therm use or kilowatt hour use per day, week or month.

### § 10.4 Degree-Day Data.

Upon request, each natural gas and electric utility subject to the Commission's jurisdiction shall make degree-day adjusted data available for comparisons of the kind made in the previous paragraph. The companies shall regularly disseminate this information through advertising or press releases to make it generally available to space-heating and air-conditioning customers.

## Illinois Revised Statutes, Chapter 111 $\frac{2}{3}$ —Public Utilities

### 902. Purpose

§ 2. The purpose of this Act is to promote the health, welfare and prosperity of all the citizens of this State by ensuring effective and democratic representation of utility consumers before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, the courts, and other public bodies and by providing for consumer education on utility

service prices and on benefits and methods of energy conservation. Such purpose shall be deemed a statewide interest and not a private or special concern.

### 909. Mailing Procedure

§ 9. Mailing Procedure. (1) In this Section "enclosure" means a card, leaflet, envelope or combination thereof furnished by the corporation under this Section and "statement" means the text of material submitted by the corporation [Citizens Utility Board] to be printed on the face of a postcard billing or to be included in any enclosure as defined in [paragraph 909]. To accomplish its powers and duties under [paragraph 505], the corporation, subject to the following limitations, may prepare and furnish to any investor-owned Class A public utility an enclosure or a statement to be printed on the face of a postcard billing.

(a) An enclosure or statement furnished by the corporation under this Section may not be submitted to the utility less than 21 calendar days in advance of the date of the public utility's periodic customer billing. The utility shall include such enclosure or statement in or on its next periodic customer billing.

(b) An enclosure shall be of a size compatible with the utility's mailing envelope, shall otherwise conform to the specifications of the utility's billing enclosure inserting equipment and may not exceed in total weight .5 ounce avoirdupois. In addition, if the public utility's periodic customer billing is by post card, the corporation may provide a plain envelope to include the enclosure and such billing, or the corporation may provide the utility with the text of a statement to be printed on the face of such billing in a space no larger than  $\frac{5}{8}$  of an inch by 3 inches. The corporation shall designate the size of type in which the statement is to be printed.

(c) An enclosure furnished by the corporation under this Section shall be limited to informing the reader of

the purpose, nature and activities of the corporation as set forth in this Act and informing the reader that the utility consumer billed may become a member in the corporation, maintain membership in the corporation and contribute money to the corporation directly. The enclosure may not have the character of a bill, statement or account. Information may include a membership application form.

(d) The corporation may not furnish any enclosure or statement to a public utility under this Section unless the enclosure or statement has been approved by the Illinois Commerce Commission under subsection (3).

(e) Upon the request of the corporation, each utility shall specify the capabilities of its billing enclosure and electronic transmission equipment within 21 calendar days of such request.

(2) (a) Except as provided under paragraph (b), any public utility furnished with an enclosure or statement under subsection (1) shall print or otherwise include or enclose such enclosure or statement within, upon or attached to the next periodic customer billing which the public utility mails or delivers to any consumer.

(b) No public utility may be required to include more than 4 enclosures or statements annually under subsection (1) in its periodic billing.

(3) Prior to furnishing a statement or enclosure to a utility under subsection (1), the corporation shall submit the enclosure to the Illinois Commerce Commission. The Illinois Commerce Commission shall approve the enclosure or statement if it determines that the enclosure (a) is not false or misleading and (b) satisfies the requirements of this Act.

(4) The corporation shall promptly reimburse each public utility for all reasonable costs incurred by the public utility in complying with the Section above the utility's normal billing costs, provided that:

(a) The utility shall furnish the corporation with an itemized accounting of such additional costs.

(b) The corporation shall not be required to reimburse the public utility for postage costs if the weight of the corporation's enclosure does not exceed .35 ounce avoirdupois; and if the corporation's enclosure does exceed such weight, then it shall be only required to reimburse the public utility for postage costs over and above what the utility's postage cost would have been had the enclosure weighed only .35 ounce avoirdupois.

(c) If a utility is unable to collect any amount due from the corporation under this Section within 2 months after the bill is mailed to the corporation, the utility may refuse further requests to mail a statement or enclosure until the amount is paid, unless an action is pending in court.

(5) A dispute arising from the operation of this Section shall be resolved by negotiations between the corporation and the public utility if possible, or by a civil proceeding in circuit court.

#### Indiana Code Ann.

#### 170 IAC 4-1-18—Informational pamphlets and rate schedules notice of proposed rate change

#### Section 18. Information Provided by Utilities to Applicants and Customers [Electric Utilities]

(A) Each utility must publish and distribute, without request, to all applicants for service and to all current customers, a comprehensive pamphlet which, in clear language, easily understandable to a layman, fully describes the rights and responsibilities of the customers.

(B) A utility shall supply free of charge a copy of the rate schedules applicable to the types of service available to new applicants for and existing customers of residential service, upon request by the applicant or customer.

(C) Each utility, whenever it petitions the commission for any change in its residential base rate schedules must furnish to each residential customer within forty-five (45) days of such request a notice which fairly summarizes the nature and extent of the proposed changes.

**170 IAC 5-1-18—Information pamphlets and rate schedules; notice of proposed rate change**

**Sec. 18. Information Provided by Utilities to Applicant and Customers. [Gas Utilities]**

(A) Each utility must publish and distribute, without request, to all applicants for service and to all current customers, a comprehensive pamphlet which, in clear language, easily understandable to a layman, fully describes the rights and responsibilities of the customers.

(B) A utility shall supply free of charge a copy of the rate schedules applicable to the types of service available to new applicants for and existing customers of residential service, upon request by the applicant or customer.

(C) Each utility, whenever it petitions the Commission for any change in its residential base rate schedules must furnish to each residential customer within forty-five (45) days of such request and prior to the date of the public hearing a notice which fairly summarizes the nature and extent of the proposed changes. Notice is not necessary, under this section, for tracking increases or decreases.

**Maine Public Utilities Commission Chapter 11—Rules and Regulations and Procedure**

**6. Adjudicatory Proceedings.**

**B. Notice.**

1. Notice of Proceedings. Upon commencement of an adjudicatory proceeding [general rate increase proceeding] by filing, petition, or otherwise, notice in the form

specified by paragraphs 6(B)(3), 6(B)(4), and 6(B)(5) shall be given as follows:

a. By the Administrative Director, to the persons whose legal rights, duties or privileges are at issue, by regular mail, within fifteen (15) days after commencement of the proceeding;

b. By a public utility, except a carrier of passengers or freight, in any proceeding initiated by it and involving a general rate increase or a general rate increase proceeding. Notice by this provision shall be given by regular mail or by such other means as the utility may employ to deliver its bills, not later than fifteen (15) days after, nor earlier than ninety (90) days before the commencement of the proceeding. Before preparing its notice, the public utility shall inquire of the Office of the Administrative Director whether a deadline for intervention has been set, in order that the date may be included in the information required by Section 6(B)(5)(d).

c. By the Administrative Director, in any proceeding deemed by the Commission to involve the determination of issues of substantial public interest, to the public sufficiently in advance of the anticipated time of the decision to afford interested persons and adequate opportunity to prepare and submit evidence and argument, to petition for intervention, and to request a hearing is so desired.

**Minnesota—Rules of the Public Service Commission**

**7820.0200 Customer Information.**

The utility is responsible for informing its customers of the following information as prescribed by the following provisions:

A. A sign or notice, which shall be approved by the commission, posted prominently and conspicuously at all utility office locations open to the general public. The sign or notice shall state where, when, and to whom a

complaint is to be directed, and the address of the Public Utilities Commission and its availability for mediation upon written request.

B. The utility shall, at its expense, publish customer information, that will be offered to each new customer, and upon request, to any existing customer. This customer information must be submitted to the commission for approval. This customer information must, at a minimum, include the following:

(1) The utility's own customer policies governing the following areas: bill collections; notice of disconnection; disconnection of service; reconnection of service; deposit and guarantee requirements; and meter reading procedures.

(2) The rate schedule pertaining to the customers of that area. The current rate schedule as required by part 7820.3200 may be attached to the information to meet this requirement.

(3) The title, addresses, and phone numbers of the department(s) of the utility to which complaints should be directed, including a telephone number for customers to call in emergency situations or a concise statement as to where such information can be obtained.

(4) The information contained in parts 7820.0300 and 7820.2700 to 7820.3000.

(5) This statement: "The Minnesota Public Utilities Commission regulates this utility and is available for mediation upon written request," and the address of the Minnesota Public Utilities Commission.

C. The utility's billing statements to its customers must contain this information:

(1) This statement: "Register any inquiry or complaint at ——" (and list the address and telephone number of the utility, designating where the customer may initiate an inquiry or a complaint, or a concise statement as to where such information can be obtained).

(2) A notice to customers of the availability upon request of the customer information.

#### 7820.3500 Billing Content.

Bills rendered periodically to customers for electric and gas service shall include, but are not limited to, the following information:

- A. the present and last preceding meter reading;
- B. the date of the present reading;
- C. identification of the applicable rate schedule;
- D. the number and kinds of units metered;
- E. a complete itemization of all charges incurred at each level of customer usage;
- F. the amount of the bill;
- G. the date on which the bill will become delinquent;
- H. any late fee; if applicable;
- I. If an estimated bill, clear and conspicuous language identifying the bill as an estimated bill;
- J. the amount of state and local taxes separately itemized;
- K. fuel or power adjustment clause separately itemized, if applicable; and
- L. the information required by part 7820.0200, item C.

**7830.3200 Notice Required When Utility Changes Rates.****Subpart 1. Commission notice to governing bodies.**

When a utility has filed proposed changes in its rates or has requested new rates and charges, the commission shall, pursuant to statute, give notice by the governing bodies of each municipality or county in the area affected by such proposed changes. In addition, when determined by the commission to be appropriate, the utility proposing a change in rates shall notify individually its subscribers of the proposed change by billing stuffer or other appropriate method.

**New Mexico—Rules and Regulations Governing Residential Customer Service by Gas, Electric and Rural Electric Cooperative Utilities****2.3—Contents of Bills. Bills for utility service shall provide information which clearly states:**

- A. The beginning and ending meter reading dates, or the number of days in the billing cycle, and the date of the ending meter reading.
- B. Clear and conspicuous language identifying the bill as an estimated bill, if the bill has been estimated.
- C. The number and kind of units metered.
- D. Any meter conversions from meter reading units to billing units.
- E. Any meter multiplier constants used to determine billing.
- F. The date the bill is due.
- G. Any previous balance.
- H. An identification of the applicable rate tariff.
- I. The amount due for electric or gas usage.
- J. The amount due for special services.

K. The total amount due.

L. Gross receipts taxes and any other taxes, if not a part of the base rate.

M. The cost of service index, if applicable.

N. The automatic adjustment clauses approved by the Commission in total and in cost per unit basis, as applicable.

O. The address of the utility, designating where the residential customer may initiate an inquiry or complaint regarding the bill as rendered or the service provided.

P. If the residential customer is on a budget payment plan, a statement of (1) the actual charges for service incurred for the current billings period; (2) the budgeted amount due; and (3) the amount of credit or arrearage.

**North Carolina Utilities Commission Rules and Regulations****Rule R8-50. Notification of Available Rate Schedules and Breakdown of Company Operating Expenses.**

(a) At least once each calendar year, each electric utility shall notify its consumers of the rate schedules that are available within the rate classification in which such consumer falls. Such notice should contain brief summaries of all rate schedules within a consumer's rate classification. In addition, the notice shall contain a statement that "Complete Rate Schedules are available upon request." Each utility shall annually notify the Commission of the completion date of this notification.

(b) Each electric utility shall annually provide to each of its consumers a breakdown of its operating expenses for the most recent available twelve (12) month period expressed as a percent of each dollar of revenue. This information may be communicated generally as part of a regular bill insert, or if the utility does not include inserts with its bills, in a special mailing.

## North Dakota Public Service Commission Rules

### Section 69-09-02.1. Information to Electric Customers.

1. Each utility shall keep on file in every office of the utility where payments are received copies of its rate schedules and rules and regulations applicable thereto. Notice shall be given customers as to where this information is available as a part of the statement required by subsection 2.
2. Each utility shall send to each of its electric customers a statement containing a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, that is applicable to such customer. The statement shall be sent:
  - a. Not later than sixty days after the date of commencement of service to such customer or ninety days after October 1, 1980, whichever occurs last; and
  - b. Not later than thirty days after such utility's application for any change in a rate schedule applicable to such customer.

The statement addressing the rate schedule applied for shall include for each of the major classes of its electric customers for which there is a separate rate, a summary analysis which shows the economic impact of the proposed rate change and rate design changes, if any, for an average customer within a class based upon an average annual consumption of and a statement that the rate applied for are proposed only and that new rates will not be effective until commission action has been taken.

3. Each utility shall send to each of its electric customers not less frequently than once each year together with the customer's billing:
  - a. A clear and concise summary of the existing rate schedules applicable to each of the major classes

of its electric customers for which there is a separate rate;

- b. An identification of any classes whose rates are not summarized; and
  - c. A notice calling the attention of the customer to the availability of alternative rate schedules for the customer's particular class of service and that, upon request, the utility will assist the customer in determining the billing for load conditions specified by the customer under various rate schedules. The customer, after selecting a particular rate schedule, shall take service under the rate schedule for a period of not less than twelve months, unless the rates are changed or there is a material change in the customer's load.
4. Each utility, upon request of an electric customer, shall, without charge, send the customer a clear and concise statement of the actual consumption and cost of electric energy by such customer for each billing period during the prior year, unless such consumption and cost data is not reasonably ascertainable by the utility.
  5. Each utility shall file with the commission a sample copy of the statement format required by subsections 2 and 4 and a copy of the summary and notice required by subsection 3. Any format changes in statements or notices under this section shall be filed immediately with the commission.

## Ohio Public Utilities Commission Rules

### § 4909.19 Publication; Investigation.

Upon the filing of any application for increase provided for by section 4909.18 of the Revised Code the public utility shall forthwith publish the substance and prayer of such application, in a form approved by the

public utilities commission, once a week for three consecutive weeks in a newspaper published and in general circulation throughout the territory in which such public utility operates and affected by the matters referred to in said application, and the commission shall at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith. Within a reasonable time as determined by the commission after the filing of such application, a written report shall be made and filed with the commission, a copy of which shall be sent by registered mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as the commission deems interested. If no objection to such report is made by any party interested within thirty days after such filing and the mailing of copies thereof, the commission shall fix a date within ten days for the final hearing upon said application, giving notice thereof to all parties interested. At such hearing the commission shall consider the matters set forth in said application and make such order respecting the prayer thereof as to it seems just and reasonable.

If objections are filed with the commission within thirty days after the filing of such report, the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party. The commission shall also fix the time and place to take testimony giving ten days' written notice of such time and place to all parties. The taking of testimony shall commence on the date fixed in said notice and shall continue from day to day until completed. The attorney examiner may, upon good cause shown, grant continuances for not more than three days, excluding Saturdays, Sundays, and holidays. The commission may grant continuances for a longer period than three days upon its order for good

cause shown. At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.

#### § 4904.191

(A) Each electric light company shall, at the time of the hearing required by the division (B) of section 4905.301 [4905.30.1] of the Revised Code, file proof that notice of the hearing has been published for five consecutive days ending the day preceding the hearing in at least one daily newspaper in general circulation in each county in which the company operates and which is affected by the matters referred to in the hearing notice. The hearing notice shall not appear in the legal notices section of the newspaper and shall be printed in a type size larger than agate. In addition, where its charges for fuel, expressed in terms of cents per kilowatt hour, to any class of its customers exceed by fifteen per cent or more the charges for fuel established at the last hearing on its fuel cost adjustment clause, the electric light company shall, at least thirty days prior to the next scheduled hearing on its fuel cost adjustment clause, notify its customers on the bill or by bill insert of the scheduled hearing. The public utilities commission shall determine a uniform format for the content of all notices required under this division.

#### 4909:1-11-10 Hearing.

##### (A) Time.

(1) Each electric utility shall be subject to a public hearing once in every six months for commission consideration of those matters set forth in paragraph (B) of this rule.

(2) A public hearing may be held at a lesser interval of time as ordered by the commission, upon its own mo-

tion or upon application of the electric utility or any other interested party, if changes in acquisition and delivery costs or in system operating characteristics arise which cause or may be reasonably anticipated to cause at least a twenty per cent increase or decrease in the fuel component. The commission shall issue an appropriate order within forty-five days after the date such an application is filed.

(B) Scope.

The electric utility shall demonstrate at its EFC hearing that its acquisition and delivery costs were fair, just, and reasonable. The commission shall consider, to the extent applicable:

- (1) The efficiency of the electric utility's fuel procurement practices and policies;
- (2) The results of the management/performance audit;
- (3) The results of the financial audit;
- (4) Compliance by the electric utility with previous commission performance recommendations; and
- (5) Such other factors as the commission considers appropriate, including, but not limited to:
  - (a) Determination of the EFC rate to be charged by the electric utility during the next current period; and
  - (b) Calculation of the cost effectiveness measure under "Appendix A" to this chapter.

(C) Notice.

Each electric utility shall cause notice of its semiannual EFC hearing to be published and shall file proof of publication in accordance with division (A) of section 4909.191 of the Revised Code. In addition to the requirements of that section, each electric utility shall cause the same hearing notice to be published once between fifteen

and thirty days prior to the hearing date. The hearing notice shall comply with the uniform format for form and content determined by the commission.

**Oklahoma Statutes, Title 17**

**§ 254. Disclosure in Customer Bills.**

Each public utility subject to a fuel adjustment clause shall separately disclose in its customer bills the per unit cost of its fuel, purchased power or purchased gas adjustment. Upon request by any individual customer, such utility shall also disclose for the month for which the request is received:

1. The actual amount of the adjustment in dollars and cents; and
2. The per unit rate and amount thereof in dollars and cents of fuel, purchased power or purchased gas included in its basic rate.

**Oklahoma Corporation Commission Electric Rules**

**Rule 35. Information on Bills.**

The utility shall bill each consumer as promptly as possible following the reading of his meter. The bill shall show:

- (A) The reading of the meter at the end of the period for which the bill is rendered.
- (B) The date on which the meter was read, or the end of the billing period.
- (C) The number and kind of units used for billing.
- (D) The total amount due for electricity used.
- (E) Items of tax separately billed, pursuant to Rule 55.
- (F) The date by which the consumer must pay the bill in order to avoid addition of a penalty.

(G) The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.

(H) A distinct marking to identify an estimated bill.

(I) If there is a conversion from meter reading units to billing units, or any calculation to determine billing units from recording or other devices, or any other factors used in determining the bill, full information shall be furnished on request.

(J) In the case of a special form of billing, such as a level payment plan, any of the above information which is inappropriate may be omitted.

(K) The fuel adjustment or purchased power adjustment factor associated with the respective clauses on the consumer's bill.

(L) The electric bill submitted by the utility furnishing electric service to the consumer shall be allocated to the party(ies) affected by such consumer submeters in a manner approved by and on file with the Commission's Director, Public Utility Division.

**Oregon: Initiative Measure #3 (enacted Nov. 6, 1984)**

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** The people of the State of Oregon hereby find that utility consumers need an effective advocate to assure that public policies affecting the quality and price of utility services reflect their needs and interests, that utility consumers have the right to form an organization which will represent their interests before legislative, administrative and judicial bodies, and that utility consumers need a convenient manner of contribut-

ing to the funding of such an organization so that it can advocate forcefully and vigorously on their behalf concerning all matters of public policy affecting their health, welfare and economic well-being.

**SECTION 2.** As used in this Act, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Board" means the Citizens' Utility Board of Governors.

**SECTION 10.** (1) Upon request by the Citizens' Utility Board pursuant to this section, each utility shall include in billings to a utility consumer materials prepared and furnished by the Citizens' Utility Board, not exceeding in folded size the dimensions of the envelope customarily used by such utility to send billings to its customers.

(2) The Citizens' Utility Board shall not intentionally make any false material statement in any material submitted to a utility for inclusion with a billing. If the utility believes that the Citizens' Utility Board has intentionally made false material statements in an enclosure, it may file a complaint with the Public Utility Commissioner of Oregon within five days of receipt. The Public Utility Commissioner of Oregon must review the complaint within ten days, and if the Commissioner determines that the Citizens' Utility Board has intentionally made false material statements, the commissioner shall give the Citizens' Utility Board of Governors written notification that specifies any false material statements made and the reasons why the Commissioner determines the statements to be false.

(3) No utility shall be required to enclose Citizens' Utility Board material with a billing more than six times in any calendar year.

(4) The Citizens' Utility Board shall notify a utility of its intention to include under the provisions of this Act any materials in any specified periodic billing or billings not fewer than 30 calendar days prior to the mailing of the periodic billings and shall supply the utility with the material not fewer than 20 calendar days prior to the mailing of the periodic billings.

(5) All material submitted by the Citizens' Utility Board for inclusion in a utility billing must include the return address of the Citizens' Utility Board. A utility is not required to deliver or forward to the Citizens' Utility Board material intended for the Citizens' Utility Board mistakenly sent to the utility. However, a utility shall retain such materials for a period of 60 days from the date of receipt. The utility shall notify the Citizens' Utility Board that such materials have been received and make these materials available to the Citizens' Utility Board on demand.

**Section 11.** (1) The Citizens' Utility Board shall not be required to pay any postage charges for materials submitted by the Citizens' Utility Board for inclusion in a utility billing if such materials weigh four-tenths of one ounce avoirdupois or less. If the materials submitted weigh over four-tenths of one ounce avoirdupois, then the Citizens' Utility Board shall reimburse the utility for a portion of the postage costs which is equal to that portion of the Citizens' Utility Board material over four-tenths of one ounce avoirdupois in proportion to the total weight of the billing. In addition to postage costs, the Citizens' Utility Board shall reimburse such other reasonable costs, as determined by the Public Utility Commissioner of Oregon, incurred by a utility in complying with section 10 of this Act.

(2) Reimbursement of a utility by the Citizens' Utility Board shall be made within 60 days of the date of utility submits to the Citizens' Utility Board an itemized state-

ment of the costs incurred by the utility. In no event shall such reimbursement exceed the fair market value for the services provided by the utility.

#### **South Carolina Code of Laws 1976, Vol. 26**

#### **Public Service Commission Regulations Pertaining to Utilities**

#### **Reg. 103-330. Customer Information.**

Each electrical utility shall:

- a. Maintain up-to-date maps, plans, or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the electrical utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving customers within its operating area.
- b. Provide to each new residential and small commercial customer, within 60 days of application for service, a clear and concise explanation of the available rate schedules for the class of service for which the customer makes application for service.
- c. Provide to each residential and small commercial customer to whom more than one rate schedule is reasonably available a clear and concise summary of the existing rate schedules applicable to the customer's class of service at least once a year.
- d. Notify each affected customer of any proposed adjustment in rates and charges, excluding adjustment of base rates for fuel costs within sixty (60) days of the date of the filing of such adjustment or as otherwise directed by the Commission.
- e. Provide to each customer, upon request, a clear and concise statement of the actual consumption of electrical energy by such customer for the previous twelve (12) months.

**Reg. 103-430 Customer Information.**

Each gas utility shall:

- a. Maintain up-to-date maps, plans or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the gas utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving customers within its operating area.
- b. Notify each affected customer, in writing, as prescribed by this Commission, of any proposed change in rates and charges within 45 days of the gas utility's filing of such proposed change with the Commission. Unless the Commission orders otherwise, this notice requirement shall not apply to Purchased Gas Adjustments, Curtailment Adjustments and Exploration Adjustments. Certification that the above notice requirement has been met shall be furnished the Commission by the gas utility.

**Washington Administrative Code**

**WAC 480-80-125 Notice by Utility to Customers Concerning Hearing.** The purpose of this requirement is to ensure that customers of a utility which is proposing a rate increase receive reasonable notice of the nature and the magnitude of the proposed increase, so that the customer is able reasonably to make an informed decision about whether to participate in the hearing process.

(1) Whenever any utility proposes to increase any rate or charge for the service or commodities furnished by it, and the commission has issued an order instituting investigation concerning such increase, the utility shall supply a statement to such customers or classes of customers designated in the order instituting investigation

that a hearing will be held by the commission at which members of the public will be afforded an opportunity to testify. The statement shall also set forth the amount of the proposed increase expressed in (a) total dollars and average percentage terms, and (b) the average monthly increases that customers in each category or subcategory of service might reasonably expect. Categories of service shall be identified in tariff terms, and if those terms are different from those commonly used by the utility or understood by customers, the notice shall incorporate that commonly used or understood terminology. The notice shall further contain the information that a public counsel will be appointed to represent the public and the mailing address of the commission to which any customer inquiries to the commission or to the public counsel relative to the public hearing date may be directed. The statement shall accompany, as a separate document, regular bills distributed by the utility to its customers, starting with the first billing cycle reasonably available following issuance of the commission's order instituting investigation and continuing throughout the utility's billing cycle covering customers of the utility as of the date of the commission's order instituting investigation. As an alternative the utility may make a separate distribution of the statement within thirty days following the date of the issuance of the order instituting investigation. Whether disseminated as part of a regular billing or separately the notice shall be prepared in such a manner as to attract attention to it and to distinguish it from other material simultaneously distributed. A copy of such statement shall also be mailed or delivered to at least one newspaper of general circulation, and at least one radio and at least one television station, in the area or each of the areas affected. The utility shall promptly file a copy of the statement with the commission and certify it has complied with or is in the process of complying with these mailing and delivery requirements.